

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1160 of 2020 and
Crl.M.P.No.8130 of 2020

P.Senthil Murugan Petitioner/Appellant/Petitioner

Vs.

1.Prabhavathi
2.Minor Sneha
3.Minor Harish Respondents/Respondents/Respondents

PRAYER : Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for records in connection with the Judgment dated 27.08.2019 made in C.A.No.47 of 2017 on the file of Principal District and Sessions Court, Salem, in confirming the Judgment dated 14.09.2015 made in M.C.No.1 of 2011 on the file of Judicial Magistrate, Thirukovilur and set aside the same.

For Petitioner :Mr.G.Arul Murugan

O R D E R

This Criminal Revision has been filed against the Judgment dated 27.08.2019 made in C.A.No.47 of 2017 on the file of Principal District and Sessions Court, Salem, in confirming the Judgment dated 14.09.2015 made in M.C.No.1 of 2011 on the file of Judicial Magistrate, Thirukovilur and set aside the same.

2. The petitioner is the husband, the first respondent is the wife and the second and third respondents are the minor children. The respondents filed the Maintenance case before the Judicial Magistrate, Thirukovilur in M.C.No.1 of 2011 under Sections 18, 19, 20, 21 of the Domestic Violence Act. The learned Judicial Magistrate after the enquiry awarded a sum of

Rs.10,000/- towards maintenance to the respondents. Challenging the said order, the petitioner approached the District Sessions Judge in C.A.No.47 of 2017. The learned Judge after hearing either side the appeal dismissed the Appeal on 27.08.2019, by confirming the order passed by the learned Magistrate. Challenging the said Judgment, the petitioner has filed this revision.

3. The learned counsel for the petitioner would submit that the petitioner filed petition for Divorce against the first respondent and got divorce against which, the first respondent filed C.M.A.No.14 of 2017 before the learned Principal Court, Villupuram and the same was dismissed, which aspect was not considered by the Courts below. He would further submit that after the H.M.O.P. filed for divorce was allowed, the respondents filed a petition for maintenance, but the Courts below failed to consider the same and awarded maintenance. He would further contend that the Courts below failed to consider the fact that the respondents are now residing in the house of the petitioner, despite the fact that the first respondent is having a house in her name. Hence, he prays that the order passed by the learned Magistrate as well as the learned Principal District and Sessions Judge is liable to be set aside.

4.Heard. Perused the materials on record.

5. Admittedly, the relationship of the parties are not disputed. Though the petitioner has stated that the respondents are living in the house of the petitioner, at the time of filing the petition before the learned Magistrate under Domestic Violence Act, admittedly the learned Magistrate has not awarded any share in the house of the petitioner and further the respondents also not sought for any share in the property of the petitioner and only sought permission to reside in the house of the petitioner and also claimed maintenance. Admittedly the petitioner divorced the first respondent and now the first respondent is living with two children. Further, the petitioner is doing the business and his income is also not disputed. Both the Magistrate and the learned Sessions Judge on a detailed enquiry found that the respondents have established that the petitioner has got sufficient means to maintain his wife and children. Though the learned counsel for the petitioner would submit that the petitioner got divorce and only after that the first respondent has filed petition seeking maintenance, it is well settled proposition of law that the divorced wife is also entitled for maintenance under Section 125 of Cr.P.C. or the

Domestic Violence Act and therefore admittedly at the time of filing the petition, both the second and third respondent are minors, the learned Magistrate awarded only a sum of Rs.10,000/- which is very reasonable and not on the higher side. Since the relationship of the parties are not disputed and the means of the petitioner were established, before the trial court, the petitioner who is the dutiful husband and also the father of the minor children is liable to pay the maintenance. In this case, admittedly the petitioner has got divorce not on the ground of adultery. Therefore, under these circumstances, this Court does not find any merit in the revision. The Trial Court has rightly awarded only a sum of Rs.10,000/- considering the cost of living as on date and the said amount is not excessive. Hence this Criminal Revision is liable to be dismissed.

Accordingly, the same is dismissed. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Court, Salem.
2. The Judicial Magistrate, Thirukovilur.

Cr1.RC.No.1160 of 2020

AD(CO)
CSR 19.03.2021

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